

UNITED STATES PATENT AND TRADEMARK OFFICE

MAILED

JUN 28 2006

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GREGORY D. LINDEN, BRENT R. SMITH,
NIDA K. ZADA, JONATHAN O. AIZEN,
GEOFFREY B. MACK and AARON STEWART

Application No. 10/050,579

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on June 20, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matter requiring attention prior to docketing is identified below:

The Examiner's Answer mailed February 21, 2006 does list the prior art of record being relied upon in the rejections. Page 3 of the examiner's answer contains a section heading titled "**(8) Evidence Relied Upon**" that states "[n]o evidence is relied upon by the examiner in the rejection of the claims under appeal" beneath it. The Manual Of Patent Examining Procedure (MPEP) § 1207.02(A) (8th ed., Rev. 3, August 2005) defines the above heading as follows:

(8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

As per the above, since the examiner's § 103(a) rejections are based on prior art references, the references should be (have been) listed under the "(8) Evidence Relied Upon" heading in the examiner's answer. Correction is required.

Accordingly, it is

ORDERED that the application is returned to the Examiner

- a) to issue a revised Examiner's Answer listing the prior art of record being relied upon in the rejection(s) of the appealed claims, and
- b) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
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By: 
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DMS/vsh

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